

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEPHEN M. BOTTILA,

Plaintiff,

v.

CITY OF MADISON POLICE DEPARTMENT,

Defendant.

ORDER

08-cv-432-bbc

On August 11, 2009, I entered judgment in this case in favor of defendant City of Madison Police Department after granting its motion for judgment as a matter of law. Defendant filed its motion for judgment as a matter of law after plaintiff presented his case to the jury.

On September 2, 2009, plaintiff filed a motion to “declare mistrial,” but it is not clear what relief plaintiff is seeking. If he is moving for a new trial, his motion is untimely. Pursuant to Fed. R. Civ. P. Rule 59(b), a motion for a new trial must be filed no later than 10 days after the entry of judgment.

On the other hand, the language of his motion appears to suggest that plaintiff wants someone to review the decision to grant defendant’s motion for judgment as a matter of law.

In order to obtain such review he would have to file a notice of appeal in this court together with the \$455 filing fee for the appeal or a request to proceed in forma pauperis on appeal. Because I cannot determine what relief plaintiff is seeking, I will provide him an opportunity to advise this court whether he wishes his motion to be construed as a notice of appeal. No later than September 30, plaintiff is to advise the court how he wishes his motion to declare a mistrial to be construed.

ORDER

IT IS ORDERED that plaintiff has until September 30, 2009 to advise this court whether he wishes his motion to be construed as a motion for new trial under Rule 59 or as a notice of appeal.

Entered this 14th day of September, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge